Supreme Court, U.S.
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86-514
No.

In The Supreme Court of the United States

October Term, 1986

PAUL SILVERSTEIN,

Petitioner,

vs.

JOSEPH BARNES, ALAN ALPERT, FRANK BLANDGIARDO, THOMAS WORNOM, ROBERT KINSELLA and MILTON MALDONADO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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50 pp

QUESTIONS PRESENTED

1. Did Petitioner, a complainant in a Criminal Court proceeding, have a Constitutional right to be present in court every time a hearing was held on his complaint?

2. Did the dismissal of the complaint, based upon the unsworn, hearsay statement of an assistant district attorney, in Petitioner's absence, violate Petitioner's Constitutional right to have his complaint of excessive noise, heard by a judge and a decision rendered on the facts and law involved?

3. Did the failure of the District Court and the Court of Appeals to act on Petitioner's request to impound the original stenographic notes taken by the

court reporter at the January 24, 1985 hearing, which would have substantiated his charge that the official transcript had been falsified, violate Petitioner's Constitutional rights?

TABLE OF CONTENTS

Page

Questions Presented.....1

Table of Authorities.....iii

Attorneys for the Respondents.....v

Opinions Below.....3

Jurisdictional Statement.....3

Constitutional Amendment Involved.....3

Statutory Provisions Involved.....4

Statement of the Case.....4

Reasons for Granting the Writ.....10

Point I - The Supreme Court has ruled many times that "Liberty" in the Fourteenth Amendment means more than mere physical freedom.....16

Point II - Dismissal of the complaint based on a hearsay statement, in Petitioner's absence, violated his essential right of cross examination.....19

Point III - Conspirators do not conspire under a spotlight.....22

Point IV - The Courts below committed error in dismissing the complaint.....24

Conclusion.....26

Appendix

Opinion of District Court.....A1

Opinion of the Court of Appeals.....A18

Judgment.....A21

TABLE OF AUTHORITIES

Cases	Pages
Board of Regents v. Roth, 408 U.S. 564, 92 S Ct 2701, 33 L.Ed. 2d 548 (1972).	17
Bolling v. Sharpe, 347 U.S. 497, 74 S Ct 693, 98 L.Ed. 884 (1954)	17
Conley v. Gibson, 355 U.S. 41, 45, 2 L.Ed. 80, 78 S Ct 99 (1957). .	24
Great Lakes Trans.Co. v. Grayco Contractors, C.A.Mich. 506 Fed. 2d, 498, 502.	20
Karr v. Townsend, 606 F. Supp. 1121 (1985).	17
Lessman v. McCormick, 591 F. 2d 605 (1979).	22
People v. Lewis, 249 N.W. 451, 264 Mich. 83.	20
Scheuer v. Rhodes, 416 U.S. 232, 40 L.Ed. 2d 90, 94 S Ct 1683. . .	24
Stanley v. Illinois, 405 U.S. 645, 92 S Ct 1208, 31 L.Ed. 2d 551 (1972).	17

Other Authorities

United States Constitution
Fourteenth Amendment. 3

Other Authorities (cont'd)

42 U.S.C. 1983 4

42 U.S.C. 1985(3). 4

Constitutional Law, 2d Ed.
(Forkosch) p. 409 17

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (SWEET, J.) is unreported but is contained in the appendix to this petition. The opinion of the United States Court of Appeal for the Second Circuit is not yet reported but is set forth in the appendix to this petition.

JURISDICTIONAL STATEMENT

The date of the opinion of the Court of Appeals is July 28, 1986. This petition is filed within ninety days of that opinion. The statutory provision conferring certiorari jurisdiction is 28 U.S.C. sec. 1253(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Fourteenth Amendment, " . . . nor shall any state deprive any person of life, liberty or property without due process

of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATUTORY PROVISIONS INVOLVED

42 United States Code sec. 1983

42 United States Code sec. 1983(5)

STATEMENT OF THE CASE

Petitioner appeared in the Criminal Court of the City of New York and made a complaint of making excessive noise against Respondent Barnes. Barnes was served with a summons to appear on October 28, 1983. Barnes failed to appear. The Judge ordered the issuance of a bench warrant and adjourned the case to November 1, 1983. Barnes appeared on November 1, 1983 and was arraigned. The Judge adjourned the case to December 1, 1983. Five warrants were issued for Barnes' arrest for failing to appear. Barnes never appeared in court

again until September 25, 1984 when he appeared in court with Police Officer Maldonado, a warrant officer. Petitioner was not given notice of this hearing and was, therefore, not present.

Based on a hearsay statement made by Wornom, an Assistant District Attorney, who had spoken to Maldonado (who was present in the courtroom), the Judge dismissed the complaint.

Upon learning of the dismissal of the complaint Petitioner protested to an official of the Criminal Court. The case was restored to the calender for December 19, 1984. Barnes did not appear on December 19, 1984. The case was adjourned to January 24, 1985.

On January 24, 1985 Petitioner appeared in the Criminal Court. Two Assistant District Attorneys were assigned to that Part, Mr. Kinsella and

Miss DiPasquale. Petitioner saw Barnes sitting in the last row of seats in the courtroom. Petitioner asked DiPasquale to have the Barnes case called. DiPasquale said, "I am not going to get involved in this case."

Petitioner asked a court officer to have the case called. Soon thereafter the case was called. Petitioner looked to see if Barnes was coming up to the front of the courtroom, and saw that Barnes was leaving the courtroom. Petitioner entered the Counsel area intending to address the court. Kinsella said to Petitioner, "You have no right to represent yourself. As an Assistant District Attorney I represent you and I am going to move to dismiss the case." Petitioner said "Why?" Kinsella made no reply.

Petitioner walked up to the Counsel

table and addressed the Court. Before Petitioner could complete his statement Judge Alpert interrupted Petitioner and said, "You have no right to represent yourself. The District Attorney represents you." Petitioner said, "I have a Constitutional right to be heard." Petitioner refused to move until he had a chance to tell Judge Alpert about the unusual circumstances that had occurred, as stated above. Judge Alpert ordered the court officers to remove Petitioner from the courtroom.

Two court officers carried Petitioner bodily out of the courtroom without any resistance from Petitioner. Barnes was not present in the courtroom at that time.

Petitioner ordered the transcript that same day but did not receive it until March 15, 1985. Petitioner

charges that the transcript of the hearing on January 24, 1985 has been falsified so that it is not a true and accurate account of the proceedings. For example, it fails to show that Judge Alpert ordered the court officers to remove Petitioner from the courtroom and that Petitioner was physically removed from the courtroom. Furthermore, Petitioner's statement that he had a Constitutional right to be heard is also omitted from the transcript. The transcript also fails to include any statement by Judge Alpert dismissing the complaint.

On November 5, 1985 Petitioner commenced the case at bar against the name Respondents. Motions to dismiss the complaint were made by all of the Respondents.

No argument was permitted on the

motions to dismiss and they were submitted to Judge Sweet for determination. Judge Sweet rendered an opinion dated April 8, 1986, which granted all the motions to dismiss.

Petitioner filed an appeal with the United States Court of Appeals for the Second Circuit. The appeal was heard on July 28, 1986. Petitioner argued in his own behalf. Cathy A. Bell, Esq., attorney for Barnes, stated that she was speaking in behalf of all of the other Respondents' attorneys. Her only argument was a request that the motions for sanctions against Petitioner be granted.

The Court of Appeals filed its opinion in which it affirmed Judge Sweet's decision and imposed sanctions against Petitioner in the form of double costs and attorneys' fees, which amount to approximately $1300.00.

REASONS FOR GRANTING THE WRIT

1. Petitioner lives in a large apartment house. Barnes' apartment is next door to Petitioner's apartment. Barnes plays loud music with drum accompaniment at all hours. Petitioner's first written complaint to the management of the building was dated August 12, 1981. As a result of complaints made by Petitioner and Laura Blaustein (whose apartment is on the other side of Barnes' apartment), the Landlord commenced an eviction proceeding against Barnes. Petitioner appeared and testified in the New York City Housing Court. Barnes failed to appear. The Court granted an order of eviction. Thereafter the attorney for the Landlord and Barnes entered into a stipulation in which Barnes agreed not to play loud music which annoyed other

tenants. A copy of said stipulation is to be found in Petitioner's "Affirmation in Opposition to Motion for Sanctions made by Barnes." The stipulation is dated October 20, 1982 and states in part that,

> "The Respondent (Barnes) specifically agrees not to interfere with the quiet enjoyment of the other tenants' apartments and the rights and comforts of the other tenants of the premises."

Notwithstanding said stipulation Barnes resumed playing loud music which annoyed other tenants. Ignoring Petitioner's complaints and those of Blaustein the Landlord took no further legal action against Barnes.

Petitioner went to the Criminal Court of the City of New York and attempted to make a complaint of excessive noise against Barnes. Petitioner was sent to the Mediation and

Arbitration Unit of the Criminal Court. At that Unit, after hearing his complaint, he was given a "Request to Appear" to serve on Barnes. The "Request" was served on Barnes, Barnes failed to appear. Petitioner was given a "Further Request to Appear." The "Further Request" was served on Barnes who again failed to appear. Petitioner was now eligible to make a complaint of excessive noise in the Criminal Court, which he did.

Barnes was served with a summons to appear on October 28, 1983. Barnes did not appear. The Judge ordered the issuance of a bench warrant and adjourned the case to November 1, 1983. Barnes appeared on November 1, 1983 and was arraigned. The Judge adjourned the case to December 1, 1983. Barnes failed to appear on that date. Five warrants

were issued for the arrest of Barnes but he never appeared until September 25, 1984, when he appeared "voluntarily" in court with Maldonado, the warrant officer.

The transcript shows that at first Judge Blandgiardi adjourned the case to October 12, 1984, which would allow time for the Court to notify Petitioner to appear on that date. However, after an "Off the record discussion," Assistant District Attorney Wornom stated as follows:

> "MR. WORNOM: For the record we have had a discussion with Officer Maldonado. He has discussed this matter with the Complainant who stated the noise from Mr. Barnes has been quieting down somewhat in recent weeks . . . So at this time the People move to ACD (adjourned in contemplation of discharge) and the condition of that adjournment is that Mr. Barnes continue to keep a reasonable level of noise in his apartment."

Petitioner denies that he made such statement to Maldonado. Even though Petitioner had given Maldonado a description of Barnes, his home and law office addresses, Maldonado had never executed any of the five warrants issued for the arrest of Barnes, during the period from December 13, 1983 to September 25, 1984.

Barnes failed to appear in the Housing Court. He failed to appear twice in the Mediation & Arbitration Unit of the Criminal Court; he failed to appear at least five times in the Criminal Court.

Barnes, an attorney, has been rewarded for his repeated failures (8 times) to appear in court, while Petitioner on the other hand, has been deprived of his Constitutional right to have his complaint of excessive noise

heard by a Judge and have a decision rendered on the facts and law.

POINT I

THE SUPREME COURT HAS RULED MANY TIMES THAT "LIBERTY" IN THE 5TH AND 14TH AMENDMENTS MEANS MORE THAN MERE PHYSICAL FREEDOM

Petitioner in his brief submitted to the District Court stated that Judge Alpert and Judge Blandgiardi violated his Constitutional rights by proceeding in the Criminal Court case against Barnes in the absence of Petitioner.

Counsel for the respective Respondents failed to respond in any way in their briefs to this Constitutional point made by Petitioner.

Judge Sweet in his opinion stated that:

> "Where Silverstein has no protected liberty or property interest in the proceedings, he cannot claim that these proceedings deprived him of procedural due process."

But Petitioner had a "Liberty" interest in the Barnes proceeding, to

wit, the quiet enjoyment of his home.

In the text on Constitutional Law, 2nd Ed. (Forkosch) it states on page 409:

> "In 1877 the Supreme Court felt that by 'liberty' something more is meant than mere (physical) freedom . . . Twenty years later the Justices felt that the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways . . . ."

In Karr v. Townsend, 606 F. Supp. 1121 (1985) (U.S. Dist. Ct., West. Dist., Ark.) the Court stated:

> "However, it has also been long settled that the term "Liberty" as used in the Fifth and Fourteenth Amendment is not confined to mere freedom from bodily restraint. . . ."

and it cited the following Supreme Court Cases:

> "Bolling v. Sharpe, 347 U.S. 497; 74 S Ct 693; 98 L.Ed. 884; Stanley v. Illinois, 405 U.S. 645, 92 S Ct 1208, 31 L.Ed. 2d 551; Board of Regents

v. Roth, 408 U.S. 564, 92 S Ct 270; 33 L.Ed. 2d 548."

By proceeding with the hearing of the criminal charge against Barnes in the absence of Petitioner, Judge Alpert and Judge Blandgiardi violated Petitioner's Constitutional rights to due process and equal protection of the law.

The Court of Appeals affirmed the decision of the District Court (SWEET, J.) without any specific reference to this Constitutional point, which had been raised by Petitioner in his argument before that Court.

POINT II

DISMISSAL OF THE COMPLAINT BASED ON A HEARSAY STATEMENT IN PETITIONER'S ABSENCE VIOLATED HIS ESSENTIAL RIGHT OF CROSS EXAMINATION.

Judge Sweet dismissed the complaint on a motion made by Wornom, who quoted an unsworn statement made by Maldonado, who quoted Petitioner as stating that, ". . . the noise from Mr. Barnes had been quieting down somewhat . . ."

This is a triple hearsay statement, Petitioner to Maldonado to Wornom to Judge Blandgiardi.

In Petitioner's brief, page 3, submitted in opposition to the motion to dismiss in the District Court made by Judge Alpert and Judge Blandgiardi, Petitioner denied that he made such statement to Maldonado.

Maldonado deliberately failed to execute any one of the five warrants issued from December 13, 1983 to

September 25, 1984. Even on September 25, 1984 when Maldonado appeared in court with Barnes, no warrant had been executed as shown by the following quotation from the official transcript for that day:

> "BRIDGE: 3N075830, Joseph Barnes, voluntary return on a warrant."

It was only upon the hearsay statement allegedly made by Maldonado that the complaint was dismissed.

In Great Lakes Transportation Co. v. Grayco Contractors, C.A. Mich, 506 Fed. 2d 498, 502, the Court stated:

> "The 'hearsay rule' excludes extra-judicial statements only when they are offered to prove the truth of the matter asserted."

In People v. Lewis, 249 N.W. 451, 264 Mich. 83, the Court stated:

> ". . . 'hearsay testimony,' that is evidence of what some one else has said, is not proof of truth of what is

claimed to have been said because the essential right of cross examination is absent."

POINT III

CONSPIRATORS DO NOT CONSPIRE UNDER A SPOTLIGHT.

In Lessman v. McCormick, 591 F. 2d 605 (1979), the Court of Appeals (10th Cir.) stated:

> "In many cases of conspiracy essential information can only be produced through discovery, and the parties should not be thrown out of court before being given an opportunity through that process to ascertain whether the linkage they think may exist actually does.
>
> * * * * *
>
> "The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.
>
> "Following the simple guide of Rule 8(f) 'that all pleadings shall be so construed as to do substantial justice' we have

> no doubt that the petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis."

In Petitioner's humble opinion this opinion could have been written for the case at bar.

POINT IV

THE DISTRICT COURT COMMITTED ERROR IN DISMISSING THE COMPLAINT, THE COURT OF APPEALS COMMITTED ERROR IN AFFIRMING SAID DISMISSAL.

Mr. Chief Justice Burger in Scheuer v. Rhodes, 416 U.S. 232, 40 L. Ed 2d 90, 94 S Ct 1683 (1974) stated as follows:

> "We granted certiorari in these cases to resolve whether the District Court correctly dismissed civil damage actions brought under 42 U.S.C. 1983.
>
> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed, 78 S Ct 99 (1957). . . ."
>
> "The judgments of the Court of Appeals are reversed and the cases are remanded for further proceedings consistent with this opinion."

In Conley v. Gibson, supra, the Court stated that:

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U.S. 197, 82 L.Ed. 745, 58 S Ct 507."

Two facts (not denied by Respondents Barnes and Maldonado) have already been established in the Criminal Court Records, 1. That Respondent Barnes failed to appear in Court eight times:

> ". . . THE COURT (Blandgiardi, J.): Why does your client fail to appear on the adjourn date?" (Transcript, Sept. 25, 1984, p. 2)

And 2. That Respondent Maldonado failed to execute five warrants during the period from December 13, 1983 to September 25, 1984:

> "THE COURT (Blandgiardi, J.): Yes, but you have how many warrants here, five." (Transcript, Sept. 25, 1984, p. 3)

"(Court Officer) BRIDGE: 3NO75830, Joseph Barnes, voluntary surrender on a warrant." (Transcript, September 25, 1984, p. 2)

The above facts are prima facie evidence of a conspiracy between Barnes and Maldonado to deprive Petitioner of his Constitutional right to have his criminal complaint heard by a judge.

CONCLUSION

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

PAUL SILVERSTEIN,
Plaintiff,

- against - 85 Civ.8748(RWS)
O P I N I O N

JOSEPH BARNES, ALAN ALPERT, FRANK BLANDGIARDO, THOMAS WORNOM, ROBERT KINSELLA and MILTON MALDONADO,
Defendants.
----------x

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SWEET, D.J.

Defendants Joseph Barnes ("Barnes"), Justice Alan Alpert ("Alpert"), Justice Frank Blangiardo ("Blangiardo"), Thomas Wornom ("Wornom"), Robert Kinsella ("Kinsella") and Milton Maldonado ("Maldonado") bring this motion to dismiss pro se plaintiff Paul Silverstein's ("Silverstein") civil rights action for failure to state a claim upon which relief can be granted, Rule 12(b)(6) Fed.R.Civ.P. For the reasons set forth below, the motion is granted, and the complaint is dismissed.

Facts

On September 12, 1983, Silverstein, an attorney and apartment neighbor of Barnes, filed a complaint with the Criminal Court of the City of New York charging Barnes with making excessive

noise with his stereo between July 31, 1981 and September, 1983. A summons for Barnes was issued and returnable October 28, 1983. However, Barnes failed to appear and a warrant was issued for his arrest. Five such warrants were issued over the following year, and Barnes failed to appear in court for each, until Police Officer Maldonado executed an arrest warrant against Barnes and accompanied him to court on September 25, 1984.

Although Silverstein was not present in court on September 25, 1984, he obtained a transcript of these proceedings, in which Justice Blangiardo determined that the case should be adjourned on contemplation of dismissal ("ACD") on the motion of the prosecutor, Assistant District Attorney Wornom. This determination was based on both the

recommendation of the prosecutor and the representation of Officer Maldonado who reported that he had spoken to Silverstein who had stated that the noise from Barnes' apartment had decreased in recent weeks. Silverstein claims that he never told Officer Maldonado that the excessive noise had abated and later insisted that the case be restored to the calendar. The case was restored to the calendar for January 24, 1985.

On January 24, 1985, Assistant District Attorney Kinsella, the prosecutor handling the case, again moved for ACD, stating the the case should never have been restored to the calendar. At the January 24, 1985 proceeding, Justice Alpert informed Silverstein that although he might disagree with the prosecutor's

determination not to proceed with the case, this decision was within the discretion of the Assistant District Attorney and was not the privilege of a private party who has recourse to civil court. Although the transcript of the January 24, 1985 proceeding does not reflect this interchange, the parties agreed that Silverstein then attempted to act as counsel in the action and entered the lawyers' enclosure. Kinsella informed him that he as prosecutor was handling the complaint and that Silverstein had no right to represent the people of the State of New York in a criminal proceeding against Barnes. Justice Alpert then instructed Silverstein to leave the lawyers' enclosure and Silverstein refused, claiming that he had a "constitutional right to be heard." Justice Alpert then

ordered the court officers to physically remove Silverstein from the courtroom.

On November 5, 1985 Silverstein filed this action claiming that the defendants "either individually, severally and/or collectively conspired to deprive him of his constitutional and civil right to have his complaint of excessive noise, a crime under New York State law, heard by a judge and a decision rendered on the testimony and evidence in the case." By letter of February 7, 1986, Silverstein also requested that the court impound the original stenographic notes of the court reporter taken at the January 24, 1985 proceeding, as Silverstein contends that the transcript was altered to delete his exchange with Justice Alpert and his subsequent removal from the courtroom. This letter was treated as a motion

returnable on the date of defendants' motion to dismiss the complaint.

Discussion

Silverstein's complaint need not be viewed with the customary deference accorded to pro se pleadings, Haines v. Kerner, 404 U.S. 519 (1972), because he is an attorney. Yet, out of an excess of caution, every presumption will be given the pleadings, which can be construed to state claims based on violations of 42 U.S.C. Section 1985(3) and 42 U.S.C. Section 1983. According to Silverstein, the five defendants conspired to deprive him of his "constitutional and civil right to have his complaint of excessive noise, a crime under New York State law, heard by a Judge and a decision rendered on the testimony and evidence in the case."

Accepting all the allegations in his complaint as true, United States v. Mississippi, 380 U.S. 128, 143 (1965), Silverstein can prove no set of facts in support of his claim which would entitle him to relief under either of these civil rights statutes. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

42 U.S.C. Section 1985(3)

Silverstein's complaint appears to allege a violation of civil and constitutional rights premised on the language of section 1985(3), which provides a federal remedy for persons who have been the victims of a conspiracy to deprive them of equal protection of the laws. A review of the statutory prerequisites for the assertion of such a claim indicates that Silverstein cannot meet the pleading

burdens for a section 1985(3) action. The Supreme Court in Griffin v. Breckenridge, 403 U.S. 88, 106(1971) outlined these requirements:

> "The language requiring intent to deprive of equal protection or equal privileges and immunities means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus beind the conspirators' actions. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all." Id at 102 (emphasis in original). See also Perrotta v. Irizarry, 430 F. Supp. 1274, 1278 (S.D.N.Y. 1977), aff'd, 573 F.2d 1294 (2d Cir. 1977).

Silverstein's complaint makes no mention whatsoever of a discriminatory motive or racial bias in the proceedings, but simply alleges that he is unsatisfied with the dismissal of the action against Barnes and the unwillingness of Justice Alpert and Assistant District Attorney Kinsella to

permit him to function as an attorney interested in the prosecution of this action.

Furthermore, although the complaint contains the word "conspiracy," it does not allege even the barest outline of overt acts or an agreement between the parties in furtherance of the goal to prevent a judicial resolution of Silverstein's criminal complaint against Barnes. Powell v. Workman's Compensation Board of State of New York, 327 F.2d 131, 137 (2d Cir. 1964) (It is incumbent on plaintiff in a section 1985(3) action to allege with some degree of particularity overt acts reasonably related to the promotion of the claimed conspiracy.)

Here the only link which Silverstein alleges among these conspirators is the dismissal of the

excessive noise complaint based on the courtroom determination of Justice Alpert and the Assistant District Attorney that the complaint did not warrant continued judicial attention. Silverstein's conclusory statements that these facially unremarkable court proceedings amount to a conspiracy are insufficient to state a cause of action. Perrotta v. Irizarry, supra, 430 F.Supp. at 1278.

Silverstein has also failed to allege that the defendants violated any cognizable civil or constitutional right by informing him that the Assistant District Attorney was the sole prosecutor of the case, and by enforcing his decision to cease prosecution of the case against Barnes. The law is well settled that no private citizen has a constitutional right to bring a criminal

complaint against another individual. Leeke v. Timmerman, 454 U.S. 83(1981); Linda R. S. v. Richard D., 410 U.S. 614(1973). Criminal prosecutions are within the province of the prosecutor, despite Silverstein's unsupported insistence that his initiation of the claim gives him a role in the prosecution. Indeed, Justice Alpert carefully advised Silverstein at the January 24, 1985 hearing that although the prosecutor had complete discretion over the decision to continue or cease prosecution, Silverstein could pursue his complaints against Barnes by instituting a civil action. Without the assertion of a discriminatory motive, without allegations of overt acts in furtherance of this conspiracy, and without an underlying violation of civil or constitutional rights, this complaint

strays a far and fatal distance from the scope of a valid section 1985(3) claim. See Buck v. Board of Elections of City of New York, 536 F.2d 522, 525 (2d Cir. 1976).

42 U.S.C. Section 1983

Silverstein's complaint conceivably could be read to allege that all but defendant Barnes, a private citizen, acted under color of state law to deprive him of his constitutional rights as proscribed by 42 U.S.C section 1983. While the reach of section 1983 is broader than that of section 1985(3), as the plaintiff is not required to allege a discriminatory purpose, Perotta v. Irizzary, supra, 430 F.Supp. at 1279, Silverstein also fails to meet his pleading burden under section 1983 which requires him to show that a person

acting under color of state law deprived him of a federal right. Gomez v. Toledo, 446 U.S. 635, 640 (1980), citing Monroe v. Pape, 365 U.S. 167, 171 (1961). As the analysis of Silverstein's 1985(3) claim demonstrates, Silverstein has no cognizable federal right to bring a criminal complaint against Barnes, and no right to interfere with the prosecutor's determination to move for a conditional dismissal of the case.

This court also might read Silverstein's complaint to accuse the Justices, the Assistant District Attorneys and the Police Officer of depriving him of due process at the two hearings conducted, a claim not within the scope of section 1985 which protects persons from equal protection violations but not due process violations. Griffin

v. Breckenridge, supra, 403 U.S. 88. However, as with his section 1985(3) claim, Silverstein had no liberty or property interest in the Barnes proceedings:

> "The court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. See Younger v. Harris, 401 U.S. 37, 42 (1971); Bailey v. Patterson, 369 U.S. 32, 33 (1962); Poe v. Ullman, 367 U.S. 497, 501 (1961). Although these cases arose in a somewhat different context, they demonstrate that in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.

Linda R.S. v. Richard S., supra, 410 U.S. at 619.

Where Silverstein has no protected liberty or property interest in the proceedings, he cannot claim that these

proceedings deprived him of procedural due process. See generally Board of Regents v. Roth, 408 U.S. 564, 571-579 (1972).

In short, Silverstein's complaint does not state a claim upon which relief can be granted under 42 U.S.C. section 1985(3), and judgment will be entered dismissing the complaint pursuant to Rule 12(b)(6), Fed.R.Civ.P. with costs to the defendants.

IT IS SO ORDERED.

DATED: New York N.Y.
April 8, 1986

/s/ ROBERT W. SWEET
U.S.D.J.

v. Breckenridge, supra, 403 U.S. 88. However, as with his section 1985(3) claim, Silverstein had no liberty or property interest in the Barnes proceedings:

> "The court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. See Younger v. Harris, 401 U.S. 37, 42 (1971); Bailey v. Patterson, 369 U.S. 32, 33 (1962); Poe v. Ullman, 367 U.S. 497, 501 (1961). Although these cases arose in a somewhat different context, they demonstrate that in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.

Linda R.S. v. Richard S., supra, 410 U.S. at 619.

Where Silverstein has no protected liberty or property interest in the proceedings, he cannot claim that these

proceedings deprived him of procedural due process. See generally Board of Regents v. Roth, 408 U.S. 564, 571-579 (1972).

In short, Silverstein's complaint does not state a claim upon which relief can be granted under 42 U.S.C. section 1985(3), and judgment will be entered dismissing the complaint pursuant to Rule 12(b)(6), Fed.R.Civ.P. with costs to the defendants.

IT IS SO ORDERED.

DATED: New York N.Y.
April 8, 1986

/s/ ROBERT W. SWEET
U.S.D.J.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of July, one thousand nine hundred and eighty-six.

[stamped]

United States Court of Appeals
filed
Jul 28 1966
Elaine B. Goldsmith, Clerk
Second Circuit

Present:

Honorable Ralph K. Winter
Honrable J. Daniel Mahoney,
Circuit Judges.
Honorable Robert C. Zampano*
District Judge.

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*The Hon. Robert C. Zampano, Senior Judge, United States District Court for the District Court for the District of Connecticut, sitting by designation.

PAUL SILVERSTEIN,
Plaintiff-Appellant,

v.

O R D E R
#86-7337

JOSEPH BARNES, ALAN ALPERT, FRANK BLANDGIARDO, THOMAS WORNOM, ROBERT KINSELLA, MILTON MALDONADO,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

The judgment is affirmed for substantially the reasons stated by Judge Sweet in his opinion.

Because this appeal was frivolous, we award double costs and $200 for attorney's fees to appellees Wornom and Kinsella, $200 for attorney's fees to appellee Barnes, $200 for attorney's fees to appellee Maldonado, and $200 for attorney's fees to appellees Alpert and Blandgiardo. Rule 38, Fed. R. App. P.

/s/
HON. RALPH K. WINTER, U.S.C.J.

/s/
HON. J. DANIEL MAHONEY, U.S.C.J.

/s/
HON. ROBERT C. ZAMPANO, U.S.D.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other courts.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

PAUL SILVERSTEIN,

Plaintiff

- against -

22
85 CIVIL 8748 RWS

JUDGMENT

JOSEPH BARNES, ALAN ALPERT, FRANK BLANDGIARDO, THOMAS WORNOM, ROBERT KINSELLA and MILTON MALDONADO,

Defendants

----------x

[stamped]

U.S. DISTRICT COURT
FILED
APR 15, 1986
S.D. OF N.Y.

Defendants having moved to dismiss, pursuant to Rule 12(b)(6), Fed.R.Civ.P., and the said motion having come before the Honorable Robert W. Sweet, U.S.D.J., and the Court thereafter on April 10, 1986, having handed down its Opinion #59153, granting defendants' motion to dismiss and dismissing the complaint, it is

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed

with costs to the defendants.

DATED: NEW YORK, NEW YORK
April 15, 1986

/s/
CLERK
RAYMOND F. BURGHARDT

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 4-16-86.

ADDENDUM

Petitioner is a member of the New York Bar who has never engaged in the full time practice of law. He had been an official court reporter for almost forty years. He retired from the New York Suprme Court in 1974.

Being completely ignorant of Federal Law and the Federal Rules of Civil Procedure he commenced this action as a pro se plaintiff.